

REMARKS

Claims 22 – 25 and 27 – 29 are pending in the application. In light of the abovementioned amendments, Applicant hereby respectfully requests reconsideration and a withdrawal of all objections and rejections in this case.

1) The Examiner's Objection to the Specification.

The Examiner has objected to the specification due to informalities. This rejection is respectfully traversed by the amendments made by the applicant to the specification. Reconsideration and withdrawal of these objections are hereby respectfully requested.

2) The Examiner's Objection to Claims 25 and 29.

Claims 25 and 29, line 3 respectively, has been objected to by the Examiner because the Examiner believes that term "positive rotation is confusing." Applicant has deleted the term "positive" and has replaced it with the term -- forward -- as suggested by the Examiner. Applicant respectfully requests reconsideration and a withdrawal of the objection and approval of the modification as presented herein.

3) The Examiner's § 102(b) Rejection of Claims 22 and 27 as being anticipated by US 1,606,860 ("Winn").

Claims 22 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 1,606,860 ("Winn"). This rejection is respectfully but strenuously traversed and reconsideration and withdrawal thereof are hereby requested.

The Examiner contends that Winn discloses an apparatus for eliminating unwanted vegetation growth comprising a reservoir providing for an herbicide or pesticide; means for selectively delivering the herbicide from the reservoir to an applicator; the applicator directly in contact with a surface; and,

regulating the flow of said herbicide by the applicator to the surface; wherein the device applies herbicide to a plant. The Examiner further contends that apparatus of Winn inherently performs the method steps of claim 22 when used because, when used to carry pesticides, insects would inherently crawl where the material is applied.

Applicant's present invention is not anticipated by, nor is it obvious in view of Winn. Claim 22 has been amended to more clearly and distinctly distinguish Applicant's present invention from the cited prior art references, namely Winn, which was relied upon by the Examiner. Claim 22 now recites the step of selectively delivering the herbicide or pesticide compound from the reservoir to an applicator -- by increasing the internal pressure of the reservoir and forcing said compound through a regulatable valve--. Further, claim 21 now recites the step of regulating the flow of said herbicide or pesticide delivered by said applicator to the surface -- by at least one of either the internal pressure of the reservoir and the position of the regulatable valve --. Applicant's method, as recited in claim 22 is distinguishable from Winn. The apparatus disclosed in Winn lacks a regulatable valve and therefore the user is unable to prevent the apparatus from dripping or leaking the pesticide or herbicide while the apparatus is oriented with the reservoir above the applicator. The present method of flowing herbicide through a regulatable valve as recited in claim 22 allows for complete cessation of flow from the reservoir to the applicator -- even while the apparatus is oriented with the applicator below the reservoir (i.e. tipped or angled). Furthermore, the method recited in claim 22 allows the discharge of said pesticide or herbicide from the reservoir to the applicator to be a function of both the position of the regulatable valve and the amount of pressure applied to the reservoir.

Therefore, for the abovementioned reasons, Applicant's presently claimed method, recited in claim 22, as amended, is not anticipated by, nor is obvious in view of the Winn reference cited by the Examiner. Applicant arrived at this result by amending claim 22 to include the features disclosed in claims 26 and 30 and has cancelled claims 26 and 30. Therefore, for the above reasons, Applicant submits claim 22, as now amended should be patentable over Winn. For the same reasons claim 27, which depends on claim 22, should also be patentable.

4) The Examiner's § 102(b) Rejection of Claims 22, 26, and 30 as Being Anticipated by Moore (US 4,947,580).

Claims 22, 26, and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 4,947,580 ("Moore"). Regarding claim 22, the Examiner's rejection is respectfully but strenuously traversed, and reconsideration and withdrawal of the rejection are hereby respectfully requested.

The Examiner contends that Moore discloses an apparatus eliminating unwanted vegetation growth comprising a reservoir providing for an herbicide; means for selectively delivering the herbicide from the reservoir to an applicator; the applicator directly in contact with the surface; and, regulating the flow of said herbicide delivered by the applicator to the surface; wherein the device applies herbicide to unwanted plants. The Examiner further contends that the apparatus of Moore inherently performs the method steps of claim 22 because, when used to carry pesticide, insects would inherently crawl where the material is applied.

Applicant's present invention is not anticipated by Moore. The abovementioned amendments to claim 22 more clearly and distinctly

distinguish the Applicant's present invention from the Moore reference, which was relied upon by the Examiner. The abovementioned discussion of the amendments to claim 22, made in the context of the Winn reference, also sufficiently and distinctly distinguishes the Applicant's present invention from Moore. Therefore, for the abovementioned reasons, the applicant's present claimed method recited in claim 22 as amended is not anticipated by the Moore reference cited by the Examiner.

As to claims 26 and 30, each claim stands rejected under 35 U.S.C. § 102(b) as being anticipated by Moore (US 4,947,580). Although claims 26 and 30 have been cancelled, the subject matter of claims 26 and 30 has been incorporated into claim 22 by this amendment. Accordingly, further discussion on traversing the Examiner's rejection is warranted. The Examiner contends that Moore further discloses squeezing the reservoir (col. 9, lines 19-27) with a regulatable valve (209 of Fig. 21/23).

Applicant's present invention embodied in claims 26 and 30 is distinguishable from Moore. The Examiner points out that Moore discloses a regulatable valve (209 of Fig. 21/23). The Examiner's reliance on the "regulatable valve" (209 of Fig. 22/23) is misplaced. Item 209 of Fig. 21/23 is a conduit of fixed diameter that, as disclosed by Moore, cannot be manipulated to regulate flow from the reservoir to the applicator. If Moore disclosed a means of varying the cross-sectional area of 209 of Fig. 21/23, 209 of Fig. 21/23 would operate as a regulatable valve. The features embodied in Applicant's claims 26 and 30, now in claim 22, are unique because the volume of discharge from the reservoir to the applicator is not only a function of the pressure on the reservoir, but also a function of the position of the regulatable valve. Accordingly, for the abovementioned reasons, the method steps as

embodied in claims 26 and 30 are not anticipated by the Moore reference cited by the Examiner. Applicant respectfully requests reconsideration and withdrawal of the Examiner's § 102(b) rejection with respect to the subject matter of claims 26 and 30.

**5) The Examiner's § 103(a) Rejection of Claim 23 Over
("Winn") (US 1,606,860).**

Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Winn. Claim 23 ultimately depends on claim 22 as amended, and it is believed allowable for the same reasons as mentioned above.

**6) Examiner § 103 Rejection of Claims 24, 25, 28, and 29 as
Being Unpatentable Over ("Winn") (US 1,606,860) In View of
Ostrowsky (US 3,993,208).**

Claims 24, 25, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Winn (US 1,606,860) in view of Ostrowsky (US 3,993,208).

Claims 24, 25, 28, and 29 ultimately depend on claim 22 as amended, and are believed to be allowable for the same reasons as discussed above.

For the same reasons, the US Patent No. 5,505,019 ("Paulson"), US Patent No. 4,351,442 ("Summers"), and US Patent No 4,413,743 ("Summers") each also fail to teach, suggest, or disclose the Applicant's presently claimed invention.

For the reasons set forth above, Applicant's presently claimed invention is neither anticipated by, nor is it obvious in view of the cited references relied upon by the Examiner, in particular, the Winn and Moore references. Reconsideration and withdrawal of all objections and rejections is hereby

respectfully requested, and an early allowance of the pending claims is earnestly solicited.

If this amendment does not result in the allowance of the application, the Examiner is requested to telephone the attorneys for the Applicant so that a personal interview may be arranged.

If necessary, an appropriate extension of time to respond is respectfully requested.

The commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully Submitted,

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APPENDIX

CHANGES TO SPECIFICATION

Once the twist valve 22 has been rotated from its closed (Fig. 2) position to a position where the stem tip 95 is partly or fully out of engagement with the flow-blocking flange 93 (such as the position shown in Fig. 6), the herbicide device 10 is then preferably tilted at an angle relative to the ground so that a quantity of the herbicide compound is permitted to flow from the reservoir 11, through the valve unit 21, and onto the brush 50. The brush 50 is placed in direct contact with the surface of a plant 100 for treatment with the herbicide. In order to increase the delivery flow from the device 10, the reservoir 11 is preferably constructed of a flexible material, such as a plastic, which can be compressed by a user's [user=s] hand to increase the flow of the herbicide through the valve unit 21 and onto the brush 50. This can be done by gravity, or by a user applying a gentle pressure on the exterior of the reservoir 1, or a combination of both. Furthermore, the flow may be controlled by the positioning of the twist valve 22, relative to the valve stem 23. The further the rotation of the twist valve 22 in the counterclockwise direction of double arrow "a" (Fig. 5) the greater the flow of the herbicide, as the tip 95 of the valve stem 23 is lowered from the flow-blocking flange 93. The flow can be regulated by the positioning of the valve stem tip 95 relative to the flow-blocking flange 93, in a range or relative positions from fully closed (Fig. 2) to fully open (Fig. 6).

In accordance with a preferred embodiment of the present invention, a preferred herbicide compound can comprise an oil-based or water-based compound which has flowable properties, and is able to be dispensed by flowing through the valve unit 21 and associated flow through brush 50. In one

preferred embodiment of the invention, an oil based herbicide compound is used, and is applied to the trunk or stem of plant, such as a weed, growth or other vegetation, for direct absorption through the plant's [plant=s] outer surface. The direct application and oil base facilitates maximum activity with the unwanted vegetation to aid in its removal. The oil based herbicide compound can be absorbed through the cambium and enter the phloem to maximize or enhance the herbicidal activity on the plant. Preferably, the herbicide suitable for use with the present invention is a compound comprising the active ingredient of a triclopyr butoxyethyl ester, which is provided as an oil based composition. Alternately, or in addition to the herbicide of the preferred embodiments, other herbicides having similar properties may also be used in accordance with the present invention. For example, the following herbicides, which are of the penetrating type may be utilized and delivered to an unwanted plant in accordance with the present invention: Garlon-4 (Dow Agro Sciences); Pathfinder II (Dow Agro Sciences); Pathway (Dow Agro Sciences); Stalker (American Cyanamid); BK800 (PBI Gordon); and Tree Hold (Amvac). Preferably, the herbicide is formulated in an oil-base fluid and can be suspended in the fluid or mixed therewith for dispensing through the valve unit 21 of the herbicide device 10.

CHANGES TO THE CLAIMS

Please cancel claims 26 and 30 without prejudice.

22. (Amended) A method for eliminating unwanted vegetation growth when an herbicide is used or for eliminating or controlling crawling pests such as insects when a pesticide is used, comprising the steps of: (a) providing a compound comprising a herbicide or pesticide compound in a reservoir; (b)

selectively delivering the herbicide or pesticide compound from the reservoir to an applicator by increasing the internal pressure of the reservoir and forcing said compound through a regulatable valve; (c) directly contacting a surface with the applicator; and (d) regulating the flow of said herbicide or pesticide delivered by said applicator to the surface by varying at least one of the internal pressure of the reservoir and the position of the regulatable valve, wherein the step of directly contacting a surface comprises contacting unwanted vegetation when an herbicide is provided in the reservoir, and wherein the step of directly contacting a surface comprises contacting a surface which crawling pests such as insects can cross when a pesticide is provided in the reservoir.

25. (Amended) The method of claim 24, further including the step of opening said cover means by applying force to a portion of said cover means to enable forward [positive] rotation of said cover means to release it from the reservoir.

29. (Amended) The method of claim 28, further including the step of opening said cover means by applying force to a portion of said cover means to enable forward [positive] rotation of said cover means to release it from the reservoir.